

Application No.: 10/067,620

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Docket No.: 416272003400

REMARKS

Reconsideration is respectfully requested. Claims 1-16 were previously pending in the application. Claims 4-7 and 13-16 were cancelled without prejudice to filing these claims or similar claims in one or more divisional or continuation applications. Claims 1-3 and 8-12 were amended with the response submitted to the USPTO on June 10, 2005. The amendments merely recast the compositions claims as method claims. Thus, no new matter has been added. Amendment and cancellation of claims is not to be construed as a dedication to the public of any of the subject matter of the claims as previously presented. Accordingly, claims 1-3 and 8-12 are now pending.

Claim rejections under 35 U.S.C. § 102(b)

The examiner has rejected claims 1-3 under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,500,347. Applicants respectfully traverse the rejection of these claims under 35 U.S.C. § 102 as discussed below.

The claims have been amended to recast the claims from diagnostic and therapeutic compositions for ryegrass or walnut pollen allergy to the corresponding methods. Since the '347 patent does not teach any relationship between the CK20 protein and the proteins from ragweed, ryegrass or walnut pollen, the '347 patent fails to teach a diagnostic method of the present claims. Further, given the lack of any teaching of such a relationship, one of skill in the art would not be in any way motivated to modify the teachings of the '357 patent to the methods of the presently claimed invention, so the '357 patent fails to render the present claims obvious.

Double patenting rejection

The Examiner has rejected claims 1-3 and 8-12 provisionally under 35 U.S.C. § 101 as allegedly claiming the same invention as that of claims 2-4, 16-18 and 22-24 of copending Application No. 10/067,484.

Applicants respectfully disagree with the Examiner's grounds for rejection and the above statements. However, in order to facilitate prosecution in this case applicants have amended the

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pending claims, without prejudice or disclaimer, to recite diagnostic and therapeutic methods of using the compositions rather than the compositions. Therefore, applicants respectfully request that the Examiner withdraw the provisional double patenting rejection.

The Examiner has rejected claims 1-3 and 8-12 provisionally under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4, 14-18, 22-24, and 32-35 of copending Application No. 10/067,484.

Applicants respectfully disagree with the Examiner's grounds for rejection and the above statements. However, in order to facilitate prosecution in this case applicants have amended the pending claims, without prejudice or disclaimer, to recite diagnostic and therapeutic methods of using the compositions rather than the compositions. Therefore, applicants respectfully request that the Examiner withdraw the provisional double patenting rejection.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

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In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 416272003400. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: June 21, 2005

Respectfully submitted,

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